IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1256 OF 1992

Municipal Corporation of the City of Pune, a Body Corporated under the B.P.M.C. Act, and having its office at Main Building, Shivajinagar, Pune - 5 ..Petitioner

versus

1. Shri Bhagwan Ganesh Sabne aged about 74 years, Occ: Retired, residing at Shri Gajanan Prasad Co-operative Housing Society (Proposed) 111/8, Erandawana, Income Tax Lane, Pune - 411 004
2. Mrs. Smita Sudhir Sabne, aged about 36 years, Occ: Tax Consultant Residing at as above. ..Respondents

Mr. R. M. Pethe h/f. Mr. R. G. Ketkar for the Petitioner.

Mr. S. Phatak h/f Mr. A. V. Anturkar, for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 12TH SEPTEMBER, 2006

ORAL JUDGMENT :

1. Heard Advocate for the Petitioner and the Respondents.

2. Respondent No.1 is a Chartered Accountant.

He was served with a notice of payment of tax by the petitioner - Pune Municipal Corporation. He challenged the said notice by filing Appeal before the Court of Principal Judge, Small Causes Court, Pune, vide Municipal Appeal No. 72 of 1988. The Appeal was allowed and the assessment made by the Corporation was set aside. Against the said Order, the Petitioner filed Civil Appeal No. 829 of 1989 before the District Judge, Pune. The said Appeal was dismissed by the District Judge, Pune, vide Order dated 2.3.1991. Against the said order, the Pune Municipal Corporation - Petitioner, has filed this writ petition.

3. A short question is involved in this Petition and that is whether user of the premises by the Respondent No.1 for his profession of Chartered Accountant can make him liable to taxes which can be levied in respect of premises used for the purpose of trade and business.

4. Advocate for the petitioner tried to contend that admittedly the premises are not used by the Respondent No.1 for residence, he is carrying on his business and therefore he must pay the taxes

leviable at premises used for business. My attention was drawn by the Advocate for the Petitioner to Proviso to Section 129 of Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "the Act of 1949"). The Proviso reads as under:

> **"Provided that the Corporation may, when fixing under section 99 or section 150 the rate at which general tax shall be levied for any official year or part of an official year, determine that the rate leviable in respect of buildings and lands or portions of buildings and lands in which any particular class of trade or business is carried on shall be higher than the rate fixed in respect of other buildings and lands or portions of buildings and lands by an amount not exceeding one-half of the rate so fixed."**

The Principal Judge, Small Causes Court, Pune, and thereafter the District Judge, Pune, negatived the contention of the Corporation holding that profession of Chartered Accountant is neither a trade nor a business. Advocate for the Respondents drew my attention to the judgment reported in **Current Tax Reporter Volume 80 Phillipos & Company, Chartered Accountants & Ors. versus State.** This is the Judgment of the Karnataka High Court, wherein it is held that Office of the Chartered Accountant or of a firm of a Chartered Accountant is not an

establishment within the meaning of Section 2(i) of the Karnataka Shops and Commercial Establishments Act, 1961, it is neither a shop nor a commercial establishment.

5. It is true that in the aforesaid decision, the question of annual rating value is not involved. However, the fact remains that even the Karnataka High Court has not accepted the submission of the Corporation that office of the Chartered Accountant is a commercial establishment. The Proviso which is provided, reproduced above, makes a distinction about the use of the building for the purpose of trade or business. Advocate for the petitioner could not show me any provision of the said Act of 1949 wherein commercial premises have been defined.

6. Admittedly, Chartered Accountancy is a profession and it is not a business. The reasoning and logic given by the lower court and the lower appellate court, cannot be faulted with, and, therefore, there is no merit in this Petition, the same is dismissed. Rule is discharged accordingly. However, in the circumstances, there will be no order as to costs.

(D.G. DESHPANDE, J.)